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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,353	03/07/2001	Steven Schwartz	BROOKSTONE 00.04	4898

7590 07/02/2003  
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EXAMINER

YU, JUSTINE ROMANG

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	09/801,353		SCHWARTZ ET AL.	
	Examiner		Art Unit	
	Justine R Yu		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 16-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This office action is responsive to the amendment filed on 1/27/03. As directed by the amendment, claims 11, 35, 50, and 51 were amended; no claim was added nor canceled. Thus, claims 1-14 and 16-51 are presently pending in this application.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 9-12, 14, 16-20, 27-33, 37, 39, 40, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson (5,895,365) in view of Rosado (5,503,457).

Tomlinson teaches a cushion 10 having a back portion 12 and padded interior (column 4, lines 4-7), a plurality of vibrating transducers 20 (massage motors), and a light source 54 supported by an arm (figure 5).

Tomlinson's arm being attached to an armrest 28 rather than being attached to the back portion. However, Rosado teaches a light source 47' being mounted to a back portion of a chair by an arm 46. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to rearrange the location of Tomlinson's light source as being mounted to the back portion as taught by Rosado, since the location is a matter of design for art recognized equivalent.

Regarding claim 2, the modified Tomlinson reference lacks a detail description that the arm is flexible. However, the feature of having a flexible arm carrying a light source, i.e., a gooseneck lamp, is notoriously old and well known in the art. Thus, the feature of having a flexible arm fails to patentably define over the prior art.

Regarding claim 9, Tomlinson shows a cup holder 26.

Regarding claim 11, Tomlinson in column 4, lines 29-32 discloses that the vibrating transducers 20 being connected to the control panel 32, and the control panel having a control knob 34 having on/off setting (figure 2).

Regarding claim 17, Tomlinson does not explicitly disclose that the massage motors comprise percussive vibrator or roller massage motors. The feature of choosing different type massaging motors is considered as an obvious design choice since such massaging motors are well known in the massaging art.

Regarding claim 18, Rosado has a housing 45 for mounting the arm to the back portion but lacks detail description that the housing is removable. The feature of choosing a removable lamp support housing for coupling the arm to the back portion is considered as an obvious design choice since the removable lamp support housing is well known in the art, also, it appears that the removable housing is not a criticality and the modified Tomlinson's device would perform equally well with the removable housing.

Regarding claim 19, the feature of choosing a battery power supply rather than AC power supply is considered as an obvious design choice, since the battery power supply is well known in the art.

Regarding claim 20, figure 3 of Tomlinson shows that the back portion is angularly adjustable relative to the armrest.

Regarding claims 47 and 48, the feature of choosing a handheldable control panel (or a remote controller) is considered as an obvious design choice since the remote controller is well known in the massage art.

4. Claims 5, 7, 8, 34, 36, 38, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson in view of Rosado as applied to claim 1 above, and further in view of Schwaegerle (5,696,574).

As in claim 5, Tomlinson in column 4, lines 57-60 and 30-32 discloses the light source 54 including an electrical cord 56 adapted for coupling with the electrical outlet 36 of the control panel 32. Tomlinson lacks a detail description that the control panel having a switch for altering the on/off status of the light source. However, Schwaegerle teaches a control panel 340 having on/off switch 370 for the lamp 24 (figure 14 and column 10, lines 28-35). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Tomlinson's control panel with an on/off switch for controlling the lamp as taught by Schwaegerle, since the on and off switch is necessary and common practice in the light source art.

As in claim 7, the feature of having the electrical wire, which connecting the light source to the control panel, being enclosed within the interior of the cushion is considered as an obvious design choice within the knowledge of one skill in the art, so as to improve the appearance of the cushion.

As in claim 8, Schwaegerle in column 10 lines 28-35 teaches the actuator 372 for adjusting the intensity of the light source 24.

5. Claims 6 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson in view of Rosado and Schwaegerle as applied in claim 5 above, and further in view of Stottmann (5,453,586).

The modified Tomlinson's control panel lacks a flexible membrane. However, Stottmann teaches a flexible membrane 40 for covering a control panel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Tomlinson's control panel with a flexible cover as taught by Stottmann, so as to enhance the cleanability for protecting the switches against fluid and dust contamination.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson in view of Rosado as applied in claim 10 above, and further in view of Liang (5,429,585).

Tomlinson teaches motors being incorporated within a cushion. Tomlinson lacks motors being located within a separated pillow such that the pillow is detachable from the cushion. However, Liang teaches a massaging pillow being detachably attached to a chair for providing massaging function. If one of ordinary skill in the art desired to have removable vibrating motors, one would have looked to Tomlinson's device and seen that Tomlinson's cushion would be able to perform equally well if the massaging motors being detachably attached to the back support of the cushion in view of Liang's teaching.

7. Claim 21-23 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson in view of Rosado as applied in claim 1 above, and further in view of Gera (5,335,962).

Tomlinson's cushion lacks a telephone. However, Gera teaches a chair having a telephone which including a base station and a handset (speaker). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Tomlinson's cushion with a telephone as taught by Gera, so as to provide convenience to the user.

8. Claims 24, 25, 44, 45, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson in view of Rosado as applied in claim 1 above, and further in view of Foster, Jr. et al (5,020,517).

The modified Tomlinson's cushion lacks a bladder and heat source. However, Foster teaches a massaging cushion including a bladder 22 and heat source 72. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Tomlinson's cushion with a bladder and heat source as taught by Foster, in order to enhance the massage effect.

9. Claims 26 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson in view of Rosado as applied in claim 1 above, and further in view of Prosser (5,838,808).

Tomlinson lacks a transmitter. However, Prosser teaches a chair having a transmitter 52 being electrically connected to a remote control 50 for effectively communicating with a conventional television (column 3, line 63 to column 4, line 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Tomlinson's cushion with a transmitter connected to a TV remote control as taught by Prosser, in order to provide convenience to the user. Notes that the feature of attaching the transmitter to a different location, i.e., the arm is considered as an obvious design choice within the knowledge of one skill in the art, since it appears that the location of the transmitter is not a criticality and the modified Tomlinson's device would perform equally well with the transmitter being attached to the arm.

10. Claims 26 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson in view of Rosado and Gera as applied in claim 21 above, and further in view of Guenther (5,613,222).

The modified Tomlinson's device lacks a transmitter attached to the arm. However, Guenther teaches a transmitter 23 for picking up sounds made by a person for transmitting such sounds to the transmitter of the telephone. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Tomlinson's cushion with a transmitter as taught by Guenther, in order to pick up sounds made by the person who sits on the cushion. Notes that the feature of having the transmitter attaching to the a particular location, i.e., the arm is considered as an obvious design choice within the knowledge of one skill in the

art, since it appears that the modified Tomlinson's cushion would perform equally well with the transmitter attached to the arm.

### *Response to Arguments*

11. Applicant's arguments with respect to claims 1-14 and 16-51 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Meyer et al (4,022,195) is cited to show a massaging cushion being attached to a back support.

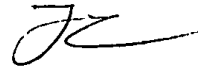
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

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Art Unit: 3764

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Justine R Yu  
Primary Examiner  
Art Unit 3764

JY  
June 25, 2003